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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re M. B. et al., Persons Coming Under the Juvenile
Court Law.

C087757

SACRAMENTO COUNTY DEPARTMENT OF
CHILD, FAMILY AND ADULT SERVICES,

(Super. Ct. Nos. JD238364,
JD238365)

Plaintiff and Respondent,

v.

Q. S.,

Defendant and Appellant.

Appellant Q. S., mother of the minors, appeals from the juvenile court's orders terminating parental rights and freeing the minors for adoption. (Welf. & Inst. Code,¹ §§ 366.26, 395.) Mother claims the juvenile court erred in failing to apply the beneficial parental relationship exception to adoption. We disagree and affirm.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

On August 15, 2017, Sacramento County Department of Child, Family and Adult Services (the Department) filed section 300 petitions on behalf of J. B. (age five) and M. B. (age two), based on mother's ongoing substance abuse. The minors were detained. An amended petition alleged the minors' father had anger management issues, resulting in domestic violence against mother in the minors' presence.

The juvenile court sustained the allegations in the petition, declared the minors dependents of the court and removed them from parental custody. The parents were provided reunification services, including supervised visits with the minors.

The parents had (separate) weekly supervised visits with the minors, and mother was permitted to call them once a week. It was reported in March 2018 that parents canceled or missed visits often. Parents did not complete their case plan and it was reported on February 5, 2018, that mother had relapsed to drug use. Mother next visited the minors on February 28, 2018. At that visit, J. B. told mother he was aware of the upcoming court hearing and was expecting to come home with her in March.

Mother appeared at the March 7, 2018, six-month review hearing. The juvenile court terminated parents' reunification services and set the section 366.26 hearing. Mother's visitation was reduced to two times a month, for two hours each visit. Mother consistently attended these visits and was reported to bring "snacks and food to the visits and interacts well with the children." The section 366.26 report noted that from August 2017 (when the minors' were initially detained) until January 2018, the minors would "become emotional and cry at the end of the visits" but that "[t]hese behaviors have subsided and the children transition easily back to their foster parent after visits." It was also reported that the parents had been visiting together in violation of a restraining order.

The minors were both healthy and developmentally on target. There were no behavioral issues and they were assessed as generally adoptable. They had been placed in a concurrent home, but the placement failed. At the time of the section 366.26 hearing,

a new adoptive home had been found and they had participated in a successful overnight visit.

Mother did not appear at the July 30, 2018, section 366.26 hearing. She had not contacted counsel or the court about her absence and, therefore, her counsel's request for a continuance was denied for lack of good cause. Mother's counsel objected to the termination of parental rights, arguing that the beneficial parental relationship exception to adoption applied. (§ 366.26, subd. (c)(1)(B).) No additional evidence, however, was presented.

The juvenile court found the minors adoptable and, finding no exception to adoption applied, terminated parental rights.

DISCUSSION

Mother contends the juvenile court erred by failing to find she established the requirements for the beneficial parental relationship exception to adoption. We disagree.

At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must choose one of the several “ ‘possible alternative permanent plans for a minor child. . . . *The permanent plan preferred by the Legislature is adoption.* [Citation.]’ [Citation.] If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child. [Citation.]” (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

There are only limited circumstances which permit the court to find a “compelling reason for determining that termination [of parental rights] would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).) Such circumstances include when “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i) [beneficial parental relationship exception].)

To prove that the beneficial parental relationship exception applies, the parent must show there is a significant, positive emotional attachment between the parent and

child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) And even if there is such a bond, the parent must prove that the parental relationship “ ‘promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.’ ” (*In re S.B.* (2008) 164 Cal.App.4th 289, 297, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575; accord *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1345.) “In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.*, at p. 575.) On the other hand, “[w]hen the benefits from a stable and permanent home provided by adoption outweigh the benefits from a continued parent/child relationship, the court should order adoption.” (*In re Jasmine D.*, at p. 1350; *In re Autumn H.*, at p. 575.)

“Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.) “ ‘Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ ” (*In re Celine R.* (2003) 31 Cal.4th 45, 53, quoting *In re Jasmine D.*, at p. 1348.) The beneficial parental relationship exception is an *exception* to the general rule that the court must choose adoption where possible, and it “ ‘must be considered in view of the legislative preference for adoption when reunification efforts have failed.’ ” (*In re Celine R.*, at p. 53.)

The party claiming the exception has the burden of establishing the existence of any circumstances that constitute an exception to termination of parental rights. (*In re C.F.* (2011) 193 Cal.App.4th 549, 553.) The factual predicate of the exception must be supported by substantial evidence, but the juvenile court exercises its discretion in weighing that evidence and determining detriment. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.)

Here, it was undisputed that mother maintained regular visitation and contact with the minors. Mother, however, failed to establish that the benefit of maintaining the parent-child relationship outweighed the benefit of adoption.

By the time of the section 366.26 hearing findings and orders, the minors had been out of mother's custody for almost a year. Mother's relapse had occurred five months earlier, and it had been four months since J. B. had expressed his expectation of returning to mother's custody soon.

The only evidence presented to the juvenile court regarding the beneficial nature of the minors' relationship with mother was that mother visited two times a month, brought food and snacks to visits, and interacted well with the minors. There was some evidence that back in August 2017 to January 2108, the minors would become emotional and cry at the end of visits, but it was reported that behavior had subsided and the minors subsequently transitioned easily back to the foster parent after visits. And while the minors had undergone some changes in foster care placement since that information was reported, there was no evidence that the minors' separation at the end of visits had regressed back to being emotional.

At best, there was some evidence that mother had maintained a friendly and apparently loving relationship with the minors and that visits went well. It is not enough for a parent to show frequent and loving contact during pleasant visits. (*In re C.F.*, *supra*, 193 Cal.App.4th at p. 555.) Neither a loving relationship (*In re Jeremy S.* (2001) 89 Cal.App.4th 514, 523) nor the derivation of some benefit from continued parental

contact (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466) is enough to establish the beneficial parental relationship exception to adoption.

Mother failed to meet her burden to establish that the minors had such a significant positive emotional attachment to her that the benefit of maintaining it outweighed the benefits the minors would obtain from adoption. (See *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Accordingly, the juvenile court did not err in finding that the beneficial parental relationship exception did not apply to the termination of parental rights.

DISPOSITION

The orders of the juvenile court (terminating parental rights) are affirmed.

/s/
Robie, J.

We concur:

/s/
Raye, P. J.

/s/
Renner, J.